



State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-3503 FAX (603) 271-2867



Michael J. Jean  
15 High Street  
Epping, NH 03042

RE: Construction Approval #2002041461

**NOTICE OF PROPOSED  
LICENSE ACTION  
NO. 02-001**

May 17, 2002

**I. Introduction**

This Notice of Proposed License Action is issued by the Department of Environmental Services, Water Division ("DES") to Michael J. Jean, pursuant to RSA 541-A:30 and RSA 485-A:29 and Env-Ws 1005.12. DES is proposing to revoke Construction Approval #CA2002041461 held by Michael J. Jean, based on the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

**II. Parties**

1. The Department of Environmental Services, Water Division is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. Michael J. Jean is an individual having a mailing address of 15 High Street, Epping, NH 03042.

**III. Summary of Facts and Law Supporting Proposed Action**

1. RSA 485-A:29-44 authorizes DES to review and approve the subdivision of land for the purpose of subsurface sewage disposal and the design and installation of subsurface sewage disposal systems. Pursuant to RSA 485-A:41, the Commissioner of DES has adopted NH Admin. Rules Env-Ws 1000 to implement this program.
2. Env-Ws 1004.19(b) authorizes DES to hold a hearing in accordance with RSA 541-A:31 to determine whether a permit should be revoked whenever DES receives information indicating that the information upon which the approval was based was not true and complete or was misleading.
3. Michael J. Jean is the owner of certain property located on Valley Shore Drive in Gilmanton, NH and more particularly described in Town of Gilmanton tax maps as Map 63 Lot 84 and Lot 85 ("the Property").

4. RSA 485-A:32, I requires individuals intending to construct a sewage disposal system to obtain approval from DES prior to such construction.
5. On March 14, 2002 DES received a completed Application for Individual Sewage Disposal System Approval ("the Application") for the Property from Mr. Richard Fisher, on behalf of Mr. Jean.
6. In the Application, Mr. Fisher stated that he had complied with all local regulations or ordinances relative to construction of sewage disposal systems and had obtained all other approvals that may be required to construct a sewage disposal system.
7. Based on the information provided by Mr. Fisher, including a plan for the construction of the sewage disposal system, DES issued Construction Approval #CA2002041461 ("the Approval") to Mr. Jean.
8. On April 1, 2002, DES received an appeal of the Approval from the Town of Gilmanton Code Enforcement Officer, Mr. Lee Dugal. Mr. Dugal, on behalf of the Town, alleges that the Application does not conform with all Town regulations and ordinances relative to construction of sewage disposal systems.
9. On April 3, 2002, DES received another appeal of the Approval from the Town of Gilmanton Board of Selectmen, also alleging that the Application does not conform with all Town regulations or ordinances relative to the construction of sewage disposal systems.
10. Both appeals allege that the application does not meet the Town of Gilmanton's setback requirements of 125' for septic systems from water bodies, that the lot contains significant wetlands areas which should preclude installation of a septic system on the property, and that the Town of Gilmanton Zoning Board of Adjustment had denied Mr. Jean a variance from the terms of the Gilmanton Zoning Ordinance to develop the Property.

#### **IV. Violations Alleged**

1. DES has received information from the Town of Gilmanton Board of Selectmen and the Code Enforcement Officer that indicates that the information upon which DES based the Approval was not true and complete or was misleading.

#### **V. Proposed Action**

1. Based on the violations identified in IV 1., above, DES proposes to revoke the Approval.

## VI. Hearing, Response, Proposed Settlement

Michael J. Jean has the right to a hearing to contest these allegations before the proposed license action is taken. The hearing would be a formal adjudicative proceeding pursuant to RSA 541-A:31, at which Michael J. Jean and any witnesses Michael J. Jean may call would have the opportunity to present testimony and evidence as to why the proposed action should not be taken. All testimony at the hearing would be under oath and would be subject to cross-examination. If Michael J. Jean wishes to have a hearing, one will be scheduled promptly.

RSA 541-A:31, III(e) provides that Michael J. Jean has the right to have an attorney present to represent Michael J. Jean at Michael J. Jean's expense. If the Permit is an occupational license, under RSA 541-A:31, III(f) Michael J. Jean has the right to request DES to provide a certified shorthand court reporter at Michael J. Jean's expense. **Such request must be submitted in writing at least 10 days prior to the proceeding.**

Michael J. Jean may waive his right to a hearing. If Michael J. Jean waives the hearing, DES is prepared to revoke Construction Approval #CA2002041461. Michael J. Jean should notify DES of his decision by filling out and returning the enclosed colored form by June 5, 2002.

Anyone having questions regarding this matter should contact Richard J. de Seve  
Compliance Supervisor, at 271-3442

**COPY**  
Harry T. Stewart, P.E., Director  
DES Water Division

**Certified Mail #7099 3400 0003 0695 8838**

Enclosures

cc: Board of Selectmen, Town of Gilmanton

Gretchen Rule, DES Legal Unit

W. E. Evans, P.E., Administrator, DES Subsurface Systems Bureau

Richard J. de Seve, Compliance Supervisor, DES Subsurface Systems Bureau

R. Fisher